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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

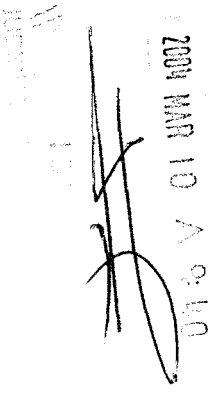
OR: ENG

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Jai Ram Reddy
Judge Sergei Alekseevich Egorov

Registrar: Adama Dieng

Date: 9 March 2004



THE PROSECUTOR

v.

Théoneste BAGOSORA
Gratien KABILIGI
Aloys NTABAKUZE
Anatole NSENGIYUMVA

Case No. ICTR-98-41-T

DECISION ON PROSECUTOR'S MOTION FOR THE ADMISSION OF WRITTEN WITNESS STATEMENTS UNDER RULE 92*bis*

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA ("the Tribunal");

SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Jai Ram Reddy, and Judge Sergei Alekseevich Egorov;

BEING SEIZED of the "Prosecutor's Motion for the admission of written witness statements as evidence in lieu of oral testimony under Rule 92*bis* of the Rules of Procedure and Evidence", filed on 31 October 2003;

CONSIDERING the Defence Objection, filed on 7 November 2003, and the Defence Brief in Support of Defence Objection, filed on 12 November 2003; the Prosecutor's Response to the Defence Objection, filed on 10 November 2003; and the oral submissions heard on 26 February 2004;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Prosecution seeks to admit into evidence the written statements of seven witnesses (BL, DAN, DAZ, DE, HV, UT and EU) in lieu of oral testimony, pursuant to Rule 92*bis*. The substance of their statements is summarized below.

SUBMISSIONS

The Prosecution

2. The Prosecution submits that Rule 92*bis* encompasses a two-part analysis for admission: whether the statements are admissible under that provision; and if so, should cross-examination be required as provided for by Rule 92*bis*(E)? In its oral arguments, the Prosecution emphasized that these are two independent enquiries.

3. With respect to the issue of admissibility, the Prosecution argues that the statements, after certain deletions have been made, do not go to proof of the acts and conduct of the Accused but speak to live issues at trial. According to the Prosecution, the evidence of these witnesses is of a cumulative nature, which is a factor in favour of admission pursuant to Rule 92*bis*(A)(i)(a), and establishes the underlying crimes. However, the Prosecution acknowledges that in respect of Witness BL, the evidence of acts of killings perpetrated by para-commandos constitutes evidence of the acts and conduct of the Accused Ntabakuze's immediately proximate subordinates.

4. Additionally, the Prosecution contends that the admission of these statements without cross-examination would save judicial time and the Tribunal's resources, and cause minimal disruption to the witnesses' lives. The Prosecution further asserts that the formal requirements for the admission of such written statements, as set out in Rule 92*bis*(B), have been met.

5. As for the second part of the test, the Prosecution submits that cross-examination should be required where the evidence goes to the issue of individual criminal responsibility of the Accused. Following this construction, none of the witnesses should appear for cross-examination, except for Witness BL who gives evidence of the acts and conduct of the Accused's immediately proximate subordinates. The motion contains an analysis of the statements of each of the seven witnesses, which will be discussed below.

The Defence

6. The Defence objects to the admission of the statements, or if the statements are admitted, that cross-examination of each witness should be required. In their joint Brief, the Defence submits that Rule 92*bis* imposes a threefold analysis: a) do the statements fulfill the requirements for admissibility under Rule 92*bis*; b) if so, should the Chamber exercise its discretion to reject the motion; and c) if the statements are admitted, should the Chamber exercise its discretion to require cross-examination of the witnesses? Additionally, the evidence must meet the requirements of relevance, probative value and reliability under Rule 89(C). In his oral arguments, Counsel for Bagosora submitted that the first principle governing the Tribunal was that stated in Article 20(4)(e), that of an adversarial process, and this principle constrained Rule 92*bis*. Counsel for Ntabakuze stated that Rule 92*bis* should be used in evidence regarding matters where the credibility of the witness would not be an issue.

7. Addressing the cumulative nature of the Prosecution witnesses' evidence, the Defence cites jurisprudence cautioning against the tendering of unnecessarily cumulative or repetitive evidence. The Defence argues that proximity between the Accused and the person whose acts or conduct the statement describes, is another relevant factor in the exercise of the Chamber's discretion. Other factors include the public interest in oral testimony and the weighing of prejudice against probative value.

8. The Defence contends that the issues of admissibility and cross-examination should be decided together, rather than sequentially, as it may be unfair to admit a statement without cross-examination but fair to do so with cross-examination. In particular, cross-examination should be required where the evidence relates to a live and important issue. The Accused should have an opportunity to confront his accusers, and cross-examination is the only avenue by which the Defence can challenge the credibility of these witnesses. The Defence cites jurisprudence stating that the requirements of a fair and expeditious trial are best served by admitting the statements (thereby saving on time taken for examination-in-chief) and requiring cross-examination. The Defence provides an analysis of each of the statements of the seven witnesses (see below).

DELIBERATIONS

9. As the motion turns on the construction of Rule 92*bis*, it is useful to set out the relevant parts:

Rule 92*bis*: Proof of Facts Other Than by Oral Evidence

(A) A Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement in lieu of oral testimony which goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment.

(i) Factors in favour of admitting evidence in the form of a written statement include, but are not limited to, circumstances in which the evidence in question:

(a) is of a cumulative nature, in that other witnesses will give or have given oral testimony of similar facts;
(b) relates to relevant historical, political or military background;
(c) consists of a general or statistical analysis of the ethnic composition of the population in the places to which the indictment relates;
(d) concerns the impact of crimes upon victims;
(e) relates to issues of the character of the accused; or
(f) relates to factors to be taken into account in determining sentence.

(ii) Factors against admitting evidence in the form of a written statement include whether:

(a) there is an overriding public interest in the evidence in question being presented orally;
(b) a party objecting can demonstrate that its nature and source renders it unreliable, or that its prejudicial effect outweighs its probative value; or
(c) there are any other factors which make it appropriate for the witness to attend for cross-examination.

(B) A written statement under this Rule shall be admissible if it attaches a declaration by the person making the written statement that the contents of the statement are true and correct to the best of that person's knowledge and belief and

(i) the declaration is witnessed by:

(a) a person authorised to witness such a declaration in accordance with the law and procedure of a State; or
(b) a Presiding Officer appointed by the Registrar of the Tribunal for that purpose; and

(ii) the person witnessing the declaration verifies in writing:

(a) that the person making the statement is the person identified in the said statement;
(b) that the person making the statement stated that the contents of the written statement are, to the best of that person's knowledge and belief, true and correct;
(c) that the person making the statement was informed that if the content of the written statement is not true then he or she may be subject to proceedings for giving false testimony; and
(d) the date and place of the declaration.

The declaration shall be attached to the written statement presented to the Trial Chamber.

[...]

(E) Subject to any order of the Trial Chamber to the contrary, a party seeking to adduce a written statement or transcript shall give fourteen days notice to the opposing party, who may within seven days object. The Trial Chamber shall decide, after hearing the parties, whether to admit the statement or transcript in whole or in part and whether to require the witness to appear for cross-examination.

10. Rule 89(C) states that: "A Chamber may admit any relevant evidence which it deems to have probative value."

11. Rule 92*bis* was adopted from the Rules of Procedure and Evidence of the International Criminal Tribunal for the Former Yugoslavia (ICTY). Therefore, case law from the ICTY provides instructive guidance in analysing Rule 92*bis* and its relationship with Rule 89(C).

12. In *Prosecutor v. Galić*, the Appeals Chamber described Rule 92*bis* as "the *lex specialis* which takes the admissibility of written statements of prospective witnesses and transcripts of evidence out of the scope of the *lex generalis* of Rule 89(C), although the general propositions which are implicit in Rule 89(C) – that evidence is admissible only if it is relevant and that it is relevant only if it has probative value – remain applicable to Rule 92*bis*".[1] Therefore, statements sought to be admitted under Rule 92*bis* must also comply with the requirements of relevance and probative value set out in Rule 89(C).

13. Rule 92*bis* was primarily intended for "crime-base" evidence. This provision specifically prohibits the admission of evidence going to the acts and conduct of the Accused as charged in the Indictment, but not the acts and conduct of others. In the same decision in *Galić*, the Appeals Chamber held that Rule 92*bis* excludes the acts and conduct of the Accused as charged in the Indictment which establish his responsibility for the acts and conduct of others, but does not exclude the acts and conduct of others for which the Accused is alleged to be responsible, for example, his co-perpetrators or subordinates.[2]

> Thus, Rule 92*bis*(A) excludes any written statement which goes to proof of any act or conduct of the accused upon which the prosecution relies to establish -
>
> (a) that the accused committed (that is, that he personally physically perpetrated) any of the crimes charged himself, or
>
> (b) that he planned, instigated or ordered the crimes charged, or
>
> (c) that he otherwise aided and abetted those who actually did commit the crimes in their planning, preparation or execution of those crimes, or
>
> (d) that he was a superior to those who actually did commit the crimes, or

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[1] *Galić*, Decision on Interlocutory Appeal Concerning Rule 92*bis*(C) (AC), 7 June 2002, para. 31. *See also Ndayambaje et al*, Decision on the Prosecutor's Motion to Remove From Her Witness List Five Deceased Witnesses and to Admit Into Evidence the Witness Statements of Four of Said Witnesses (TC), 22 January 2003, para. 20; *Kamuhanda*, Decision on Kamuhanda's Motion to Admit into Evidence Two Statements by Witness GER in Accordance with Rules 89(C) and 92*bis* of the Rules of Procedure and Evidence (TC), 20 May 2003, para. 22.

[2] *Galić*, Decision on Interlocutory Appeal Concerning Rule 92*bis*(C) (AC), 7 June 2002, paras. 8-10. *See also Milosevic*, Decision on Prosecution's Request to have Written Statements Admitted Under Rule 92*bis* (TC), 21 March 2002, para. 22.

> (e) that he knew or had reason to know that those crimes were about to be or had been committed by his subordinates, or
>
> (f) that he failed to take reasonable steps to prevent such acts or to punish those who carried out those acts.[3]

"Conduct" includes the Accused's state of mind and any statement going to proof of the Accused's act or conduct upon which the Prosecution seeks to establish state of mind is similarly excluded under Rule 92*bis*, although the Prosecution may rely on the acts or conduct of others to establish that Accused's state of mind.[4]

14. However, in certain cases, where the statement goes to proof of the acts and conduct of a subordinate which have proximity to the Accused, this may affect the Trial Chamber's decision as to whether to admit the statement in written form and whether to order cross-examination. Where the evidence is so pivotal to the Prosecution's case or the acts so proximate to the Accused, for example, where the acts occurred in the Accused's presence, it may be unfair to admit the statement under the Rule.[5]

> The exercise of the discretion as to whether the evidence should be admitted in written form at all becomes more difficult in the special and sensitive situation posed by a charge of command responsibility...That is because, as the jurisprudence demonstrates in cases where the crimes charged involve widespread criminal conduct by the subordinates of the accused (or those alleged to be his subordinates), there is often but a short step from a finding that the acts constituting the crimes charged were committed by such subordinates to a finding that the accused knew or had reason to know that those crimes were about to be or had been committed by them. Where the criminal conduct of those subordinates was widespread, the inference is often drawn that, for example, "there is no way that [the accused] could not have known or heard about [it]", or "[the accused] had to have been aware of the genocidal objectives [of his subordinates]".[6]

15. One of the factors in favour of admitting statements under Rule 92*bis* is that the evidence sought to be admitted is of a cumulative nature, in that other witnesses have testified or will testify to similar facts (Rule 92*bis*(A)(i)(a)). The Prosecution cites this factor in arguing for the admission of the statements. The Chamber notes that in *Blagojevic* and *Jokic*, the Trial Chamber cautions that this is not "an invitation to tender unnecessarily cumulative or repetitive evidence", which would affect the expeditious nature of the proceedings.[7]

16. An appropriate analysis of the application of Rule 92*bis* would therefore involve first an enquiry as to whether the statement or transcript sought to be admitted satisfies both Rule 89(C), in that it is relevant and has probative value, and Rule 92*bis*, in that it goes to proof of a matter other than the acts and conduct of the Accused as charged in the Indictment, that is, that it does not contain evidence that tends to prove or disprove the Accused's acts or conduct as charged. In

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[3] *Galić*, Decision on Interlocutory Appeal Concerning Rule 92*bis*(C) (AC), 7 June 2002, para. 10, which also discusses joint criminal enterprise.
[4] *Ibid.*, para. 11.
[5] *Ibid.*, para. 13.
[6] *Ibid.*, para. 14.
[7] *Blagojevic* and *Jokic*, First Decision on Prosecution's Motion for Admission of Witness Statements and Prior Testimony Pursuant to Rule 92*bis* (TC), 12 June 2003, para. 20.

addition, the formal requirements of Rule 92*bis*(B) must be met. Even if a statement or transcript fulfills all these requirements, the Chamber must decide whether or not to exercise its discretion to admit, bearing in mind the overarching necessity of ensuring a fair trial as provided for in Articles 19 and 20 of the Statute. For the purposes of the instant case, a relevant factor in the exercise of this discretion is the proximity to the Accused of the person whose acts are described in the statement. If, in exercising its discretion, the Chamber permits the admission of the statement, it must also decide whether or not to require cross-examination of the witness. Again, relevant factors in this decision-making process are the issue of proximity and the need to ensure a fair trial. In addition, if the evidence relates to a live and important issue between the parties, as opposed to a peripheral one, this would be a factor in favour of requiring cross-examination.[8] It is noted that the Chamber may decide to admit a statement in whole or in part. The Chamber considers that the factors in the above analysis should be considered together as a whole in order to achieve a result that respects the Accused's right to a fair trial, while promoting the efficiency of the progress of the trial.

17. Applying this analysis, the Chamber will now address in turn each of the seven written witness statements sought to be admitted.

18. The Chamber notes at the outset that the formal requirements of admission of a written statement under Rule 92*bis*(B) have been met by way of attestations attached to all the seven written statements.

Witness BL

19. Witness BL's statement describes killings of Tutsi civilians by military soldiers of the para-commando unit from Kanombe Camp, the witness's personal experience of having been hit by a club and targeted to be killed by the *Interahamwe* and soldiers checking identity cards at a roadblock, the distribution of weapons and ammunition by the military to the *Interahamwe*, the control of roadblocks by the military, the rape of girls by a corporal and killings by the *Interahamwe*, in April 1994.

20. The Prosecution submits that Witness BL's statement does not go to proof of the Accused's acts or conduct as charged, and is of a cumulative nature, a factor in favour of admission. However, the Prosecution acknowledges that the witness should attend for cross-examination as the statement sets out the acts and conduct of the Accused's immediately proximate subordinates, the soldiers of the para-commando battalion.

21. The Defence contends that the statement's prejudicial value far outweighs its probative value as it deals with subordinates sufficiently proximate to the Accused. The Defence suggests that the Chamber should exclude Witness BL's statement or if it is admitted, require cross-examination of the witness.

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[8] *Milosevic*, Decision on Prosecution's Request to have Written Statements Admitted Under Rule 92*bis* (TC), 21 March 2002, paras. 24-25; *Sikirica et al*, Decision on Prosecution's Application to Admit Transcripts Under Rule 92*bis* (TC), 23 May 2001, para. 4.

22. The Chamber finds that the statement is relevant and has probative value. Although the statement does not go to proof of the Accused's acts and conduct as charged, the Chamber considers that the description of the para-commandos' activities is but a short step away from implicating the Accused Ntabakuze as a superior, given the proximity of those subordinates' acts to the Accused. The Chamber notes the Defence's objections, in particular those relating to the description of the acts of the para-commando unit. In the exercise of its discretion to admit, the Chamber considers that it would be unfair to the Accused Ntabakuze, where the para-commandos are proximate subordinates to the Accused, to admit the statement under Rule 92*bis*.

Witness DAN

23. Witness DAN's statement deals with an attack on Christus Centre in Remera by men in military uniform seeking to kill Rwandans seeking refuge at the Centre in early April 1994. Grenades were thrown into the Centre, the refugees were shot at by these men and 17 people were killed.

24. The Prosecution submits that Witness DAN's statement does not go to proof of the Accused's acts or conduct as charged, and is of a cumulative nature, a factor in favour of admission. The Defences contends that Witness DAN's statement should not be admitted for lack of relevance but notes that the statement deals with acts which may go to the Accused's command responsibility. If admitted, the witness should be required to attend for cross-examination. Counsel for Bagosora submitted in oral arguments that as the allegations in the Indictment were broad and general in scope, the contents of the statement regarding unidentified soldiers and lists of names could refer to conduct of the Accused.

25. The Chamber finds that the statement is relevant and has probative value, and does not go to proof of the Accused's acts and conduct as charged. It is therefore admissible under Rule 92*bis*. The Chamber now turns to the exercise of its discretion to admit the statement and, if so admitted, to order cross-examination. The evidence in Witness DAN's statement has been adduced in court through previous testimony and therefore constitutes evidence of a cumulative nature, a factor in favour of admission under Rule 92*bis*(A)(i)(a). The statement refers to men in military uniform, but they are unidentified. As the Accused are charged with superior responsibility in respect of the military, the Chamber considers that fairness dictates that the statement be admitted with cross-examination.

Witness DAZ

26. The witness's statement recounts attacks launched at the "école des infirmières" (ESI) approximately three times a week by soldiers and *Interahamwe* in April 1994. The soldiers, sometimes with lists, supervised the selection of people who were then killed. Women, including the witness herself, were taken away to be raped by both the *Interahamwe* and soldiers.

27. The Prosecution submits that Witness DAZ's statement does not go to proof of the Accused's acts or conduct as charged, and is of a cumulative nature, a factor in favour of admission. The Defence argues that Witness DAZ's statement may implicate the Accused in a conspiracy and as superiors whose subordinates' acts are described in the statement. Further, the

statement contains unnecessarily cumulative evidence which will be given by future witnesses. However, if the statement is admitted, the witness should attend for cross-examination.

28. The Chamber finds that the statement is admissible under Rule 92*bis* as it is relevant and has probative value, and does not go to proof of the Accused's acts and conduct as charged. In the exercise of its discretion to admit, the Chamber notes that the evidence of the acts of soldiers has previously been testified to by other witnesses. The evidence is therefore of a cumulative nature, a factor in favour of admission under Rule 92*bis*(A)(i)(a). Even if the statement details the acts of unnamed soldiers, it describes extensive criminal conduct during a considerable period. Bearing in mind the charges faced by the Accused in respect of superior responsibility over the military, the Chamber finds that it would be fair to admit the statement with cross-examination.

Witness DE

29. Witness DE's statement details the events in Kigali on 6 and 7 April 1994, mainly the killings of Prime Minister Agathe Uwilingiyimana and the 10 Belgian peacekeepers by the Presidential Guard.

30. The Prosecution submits that Witness DE's statement does not go to proof of the Accused's acts or conduct as charged, and is of a cumulative nature, a factor in favour of admission. The Defence alleges that it has not been disclosed in full in French. In its oral arguments, the Prosecution submitted that Witness DE's statement was disclosed in full to the Defence. The statement refers obliquely to the Accused Bagosora and describes acts and conduct of subordinates of the Accused. In addition, the statement constitutes unnecessarily cumulative or repetitive evidence. If admitted, however, cross-examination should be required.

31. The Chamber notes the Defence's general objection to the statement being admitted under Rule 92*bis* and the specific objection to a sentence in the statement which reads as follows: "Major Protais MPIRANYA as the commander of the Presidential Guard received directives directly from the Minister of Defense." The Defence contends that this is an oblique reference to the Accused Bagosora. The Chamber finds that this objection has merit and that the sentence goes to proof of the Accused's acts and conduct as charged. This type of evidence cannot be adduced through the use of Rule 92*bis*. Therefore the statement is inadmissible under the Rule. In light of this finding, it is not necessary for the Chamber to consider the issue of late disclosure of the statement.

Witness HV

32. The witness's statement describes killings of Tutsi at Mudende by soldiers and armed civilians in early April 1994, and the training of MRND youth prior to the killings.

33. The Prosecution submits that Witness HV's statement does not go to proof of the Accused's acts or conduct as charged, and is of a cumulative nature, a factor in favour of admission. The Defence submits that Witness HV's statement should not be admitted as it lacks relevance, is unnecessarily cumulative and repetitive, and may have implications for the guilt of

the Accused. If admitted, cross-examination should be required. Referring to one paragraph in particular, Counsel for Nsengiyumva submitted in oral arguments that the statement contained an indirect reference to the Accused Nsengiyumva and should not be admitted. Further, Counsel contended that the statement had no probative value as Mudende was not mentioned in the Indictment.[9]

34. The Chamber notes that Counsel for Nsengiyumva's objections arise in relation to a particular sentence in the statement which reads as follows: "The gendarmes refused to move us to another location because, according to them, the *sous-préfet* of Gisenyi and the army commandant knew that the students were in the stadium." Counsel submitted that the "army commandant" referred to is the Accused Nsengiyumva. As with Witness DE's statement, the Chamber finds that the indirect reference to the Accused Nsengiyumva indicates that the statement goes to proof of the Accused's acts or conduct as charged. Consequently, the statement is inadmissible under the Rule.

Witness UT

35. Witness UT's statement contains references to arrests of family members in 1990 on suspicions of having plotted with the *Inyenzi*. These family members were later killed in 1994. The statement also describes the killing of Tutsi and attacks launched by soldiers and *Interahamwe*, including the witness's personal experience of seeking refuge from the killings, in early April 1994. The witness recounts an incident at Gikondo parish where soldiers checked identity cards and separated the Hutu from the Tutsi, and the *Interahamwe* came later to kill the Tutsi. The witness heard about rapes of Tutsi women and girls by soldiers.

36. The Prosecution submits that Witness UT's statement does not go to proof of the Accused's acts or conduct as charged, and is of a cumulative nature, a factor in favour of admission. The Defence asserts that parts of the witness's statement are inadmissible as they relate to matters beyond the temporal jurisdiction of the Tribunal. The remainder is inadmissible as it deals with acts of the Accused's subordinates. However, if the statement is admitted, cross-examination should be required.

37. The Chamber observes that the second paragraph of the statement reads as follows: "Before the events of April 1994, in 1990 to be precise, my brothers and members of my husband's family were arrested and imprisoned by the soldiers. They were suspected of plotting with the *Inyenzi* (Tutsis living in the country). They were released in 1991 due to lack of evidence. They were all killed during the events of April 1994." The Defence contends that this evidence is beyond the temporal jurisdiction of the Tribunal. The Chamber recalls its Decision dated 18 September 2003 where it was held that there are three bases of relevance for such pre-1994 evidence which are exceptions to the general inadmissibility of pre-1994 evidence: i) evidence relevant to an offence continuing into 1994; ii) evidence providing a context or background; and iii) similar fact evidence.[10] The Chamber considers that the evidence, as presented in the statement, is spare in detail and vague, and cannot be deemed to fall within the three bases of relevance. The Chamber decides that the paragraph should not be admitted.

[9] Transcript 26 February 2004, pp. 25-26.
[10] *Bagosora et al*, Decision on Admissibility of Proposed Testimony of Witness DBY (TC), 18 September 2003.

38. With respect to the other parts of the statement, the Chamber finds that these are relevant and have probative value. They do not go to proof of the Accused's acts and conduct as charged, and are therefore admissible under Rule 92*bis*. In the exercise of its discretion to admit, the Chamber notes that the evidence is of a cumulative nature, a factor in favour of admission under Rule 92*bis*(A)(i)(a). However, the crimes charged here involve widespread criminal conduct by the Accused's subordinates, so that it may be argued that the Accused should have had knowledge of the same. In this case, the requirements of a fair trial necessitate the admission of the statement with cross-examination.

Witness EU

39. Witness EU's statement describes the witness's personal experience of being targeted to be killed because he is a Tutsi, and the killings of Tutsi and destruction of Tutsi homes he witnessed in April 1994. The witness took refuge at the technical school in Murambi, which came under attack one night from soldiers in uniform and civilians, killing an estimated 40,000 people. The statement also discusses the killings at Gikongoro parish at the end of April 1994.

40. The Prosecution submits that Witness EU's statement does not go to proof of the Accused's acts or conduct as charged, and is of a cumulative nature, a factor in favour of admission. The Defence contends that Witness's EU's statement should not be admitted as it lacks relevance and deals with acts of the Accused's subordinates. However, if the statement is admitted, cross-examination should be required.

41. The Chamber finds that the statement is admissible under Rule 92*bis* as it is relevant and has probative value, and does not go to proof of the Accused's acts and conduct as charged. The Chamber notes that the evidence is of a cumulative nature, a factor in favour of admission under Rule 92*bis*(A)(i)(a). Having considered the statement as a whole, the Chamber finds that fair trial requirements necessitate its admission with cross-examination, bearing in mind the charges of superior responsibility faced by the Accused.

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the motion in respect of the written statements of Witnesses DAN, DAZ and EU, admitting those statements in whole;

GRANTS the motion in respect of the written statement of Witness UT in part, admitting the statement in part, with the deletion of the second paragraph of the statement that reads: "Before the events…the events of April 1994";

DENIES the motion in respect of the written statements of Witnesses BL, DE and HV;

ORDERS that Witnesses DAN, DAZ, EU and UT attend for cross-examination.

Arusha, 9 March 2004

Erik Møse
Presiding Judge

Jai Ram Reddy
Judge

Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]